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State of New Hampshire  
OFFICE OF ATTORNEY-GENERAL

Warren E. Waters  
Assistant Attorney General

July 2, 1953

Attorney General

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CONCORD, N.H.

Mr. James J. Barry, Commissioner  
Department of Public Welfare  
State House Annex

Under date of June 25, 1953 you advise that the City of Manchester has filed to pay its proportionate share of old age assistance granted to aliens during the period January 1, 1953 through April 30, 1953. You advise that such refusal appears to stem from a grant of such assistance to one Olivine Brisson. In respect to this individual, when your department advised the Commissioner of Charities of Manchester that an application had been made, the Commissioner refused to accept liability, setting forth as his reason for such refusal the fact that the grant contemplated would exceed the pensions granted to permanently and totally disabled world war veterans and those granted to veteran's widows. Despite the refusal of the Commissioner, your Department, based, as you advise, on the fact that the applicant met all the legal requirements prescribed in R. L. c. 126, as amended, initiated a grant of assistance to Brisson.

One can easily understand the attitude expressed by the Commissioner. There are, it would seem, many reasons why citizens who had served their country, and the widows of such citizens, ought to be preferred in matters of public grace.

These reasons, however, are of such nature that their effectiveness would appear only when presented to the legislative bodies charged with the making of policy in this regard. It is our belief that they are without weight as legal argument.

All of the forms of assistance provided under R.L. c. 126 are instituted upon applications to the Commissioner of Public Welfare, s. 14. That officer after investigation, s. 15, decides, s. 16, whether or not assistance is to be granted. While notice to and consultation with local officials is directed, the decision to make the grant and the amount thereof is that of the Commissioner of Public Welfare. An appeal from his decision lies, not to the city or town involved, but rather to his superior, the Board of Public Welfare. The decision once being made, a positive duty to reimburse the Public Assistance Fund is imposed upon the liable municipality, reimbursement being at the rate applicable to the particular form of assistance under consideration. See R. L. c. 126, s. 21, as amended by Laws 1951, c. 90, s. 7 and by Laws 1951, c. 223, s. 2.

Nothing herein is intended to suggest that the Commissioner of Public Welfare may act arbitrarily in any of the matters leading up to the grant of assistance or bearing upon its amount; his actions are to be governed by the

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statutes applicable to his office and by the rules and regulations promulgated by the Board of Public Welfare. More particularly, he cannot demand reimbursement under R. L. c. 126, s. 21 unless, as a matter of law the municipality is liable under the general statutes governing the relief of paupers.

There is in this case no allegation of improper action upon the part of the Commissioner of Public Welfare. The sole objection raised by the City is one which is not recognized -- whether by statute or by valid rule or regulation -- as relieving a municipality from its duty to reimburse.

It is hoped that the City will agree that the views expressed herein are legally valid, and that it will see fit to cause its account to be paid.

Very truly yours,

Warren E. Waters  
Assistant Attorney General

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